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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,491	04/25/2005	Joachim Guettinger	R.305861	4359

2119 7590 08/28/2006  
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EXAMINER

PRESTON, ERIK D

ART UNIT PAPER NUMBER

2834

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/532,491

Applicant(s)

GUETTINGER ET AL.

Examiner

Erik D. Preston

Art Unit

2834

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11,13,15-17,21,23 and 26-34 is/are pending in the application.  
4a) Of the above claim(s) 30 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 11,13,15-17,21,23,26-29 and 31-34 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 11,13,15,17,21,23,26 & 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kluck (US 4596941 supplied by applicant).

With respect to claim 11, Kluck teaches an electrical machine comprising: A housing for a machine, the housing including a housing body (Col. 2, Lines 36-38) and a housing cap (Fig. 1, #10), a brush holder (Fig. 1, #13 & 14) disposed in the housing for holding brushes (Fig. 1, #11 & 12), and an elastic region (Fig. 1, #24) in the housing cap which enables positioning of the brush holder relative to the commutator from outside the housing (Col. 3, Lines 54-61), wherein the elastic region is disposed and (integrally) secured in the housing cap, and wherein a seal is achieved between the elastic region and the housing cap, but it does not explicitly teach the elastic region being an elastomer element. However, it would have been obvious to one of ordinary skill in the to form the elastic region of Kluck from an elastomeric plastic since Kluck teaches that the housing cap of made of a plastic (Col. 1, Lines 54-58) that can flex, and an elastomeric plastic would fulfill that requirement. It also would have been obvious to form the elastic region from an elastomer since it has been held that one of ordinary skill in the art at the time the invention would choose a suitable and desirable material, because it would be within the general skill of a worker in the art to select a material on

the basis of its suitability for the intended use as a matter of obvious design choice (In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960)).

With respect to claim 13, Kluck teaches the machine of claim 11, wherein the elastomer element secured in the housing cap is cylindrical in shape (as seen in Figs. 1 & 2).

With respect to claim 15, Kluck teaches the machine of claim 11, wherein the elastomer element is an elastomer diaphragm (Col. 1, Lines 52-54).

With respect to claim 17, Kluck teaches an electrical machine comprising: A housing for the machine, the housing including a housing body and a holding cap, a brush holder disposed in the housing for holding brushes, and an elastic region in the housing cap which enables positioning of the brush holder relative to a commutator from outside the housing, wherein the elastic region is formed integrally with the housing cap, wherein the elastic region is formed by an annular structure, but it does not teach the elastic region being an annular wavelike structure. However, annular elastic regions having wavelike structures being used as toggles were well known in the art at the time of the invention (such as is taught by US 3094594, US 3339048 & US 4652706). It would have been obvious to one of ordinary skill in the art at the time of the invention to form the elastic region of Kluck in the form of an annular elastic region having a wavelike structure as merely an substitution of an equally well known elastic region implementation means. It also would have been obvious to one of ordinary skill in the art at the time of the invention to form the elastic region of Kluck in the form of an annular elastic region having a wavelike structure since it has been held that a change

in shape is not considered to be patentably distinct if it does not effect the utility of a device (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)).

With respect to claim 21, Kluck teaches the machine of claim 17, wherein the annular wavelike structure surrounds a positioning portion of the elastic region (Fig. 1, #23) which comes into contact with the brush holder (as seen in Fig. 2).

With respect to claim 23, Kluck teaches the machine of claim 11, wherein the electrical machine is watertight (Col. 1, Lines 37-42).

With respect to claim 26, Kluck teaches the machine of claim 17, wherein the electrical machine is watertight (Col. 1, Lines 37-42).

With respect to claims 31 & 32, Kluck teaches the machine of claims 11 & 17, wherein the brush holder is disposed in the housing. The limitation of the brush holder being disposed by way of a slight press fit is a method limitation given little patentable weight in an apparatus claim.

With respect to claims 33 & 34, Kluck teaches the machine of claims 11 & 17, wherein there is a seal between the housing body and the housing cap (Col. 1, Lines 37-42, since the entire machine is water tight, there is a seal inherently formed between the housing body and the housing cap).

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kluck (US 4596941 supplied by applicant) in view of Watson (US 3094594). Kluck teaches the machine of claim 13, but it does not teach that the elastomer element is provided with a fastening slot in an outer circumference of the cylindrical shape. However, Watson teaches an elastic element that is provided with a circumferential fastening slot (near

Fig. 1, #47) that is located on the part of the elastic element that meets a housing (Fig. 1, #21). It would have been obvious to one of ordinary skill at the time of the invention to form the integrally formed elastic element of Kluck in view of in separately formed elastic element of Watson as merely a substitution of equally well-known and equivalent elastic elements, the groove of Watson being used to affix the separately formed elastic element of Kluck to the housing of Kluck. It also would have been obvious to one of ordinary skill in the art at the time of the invention to form the elastic element of Kluck separately from the housing of Kluck since it has been held that making a one piece component into two separate pieces is not considered to be patentably distinct (In re Dulberg, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)).

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi (US 2002/0175573 previously cited) in view of Kluck (US 4596941 supplied by applicant). Hayashi teaches a windshield wiper motor (Fig. 15, #1) for use in a vehicle, but it does not teach the brush holder and elastic region of claims 11-13. However, Kluck teaches the brush holder and elastic region of claims 11-13. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the brush holder of Hayashi in view of the brush holder and elastic region as taught by Kluck because it provides a means for simply assembling an electric machine without requiring any tools (Kluck, Col. 1, Lines 37-42).

### ***Response to Arguments***

Applicant's arguments filed 4/8/2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the elastomer element is independently formed from the housing cap) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 3339048 & US 4652706

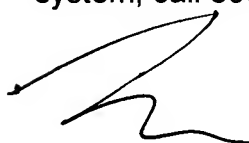
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

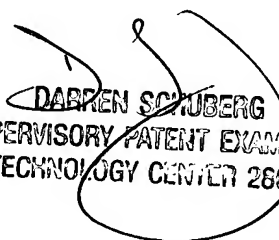
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erik D. Preston whose telephone number is (571)272-8393. The examiner can normally be reached on Monday through Friday 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darren Schuberg can be reached on (571)272-2044. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



08/14/2006



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